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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,103	07/10/2001	Robert Cahn	03493.00141	7424
28317	7590	09/30/2005	EXAMINER PARK, JUNG H	
BANNER & WITCOFF LTD., ATTORNEYS FOR AT & T CORP 1001 G STREET, N.W. ELEVENTH STREET WASHINGTON, DC 20001-4597			ART UNIT 2661	PAPER NUMBER

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/901,103	Applicant(s) CAHN, ROBERT	
	Examiner Jung Park	Art Unit 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15 and 25-29 is/are allowed.
- 6) ☒ Claim(s) 1-10, 16-24 and 30-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. Claims 1-10 and 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Swift et al. (U.S. 6,912,575, hereafter "Swift") in view of Khalil (U.S. 5,343,465).

Regarding claim 1, Swift discloses, "a method of adjusting a contracted rate of traffic for a virtual circuit comprising the steps of: a) obtaining statistical data (Swift, Figure 3, element 154 *where retrieve historical information (statistical data); the definition of historical information is described in col. 5, lines 13-14*) for the plurality of interconnected switches (Figure 1, elements 17 & 18; col. 7, lines 32-34)...";

Swift lacks what Khalil discloses, "...b) identifying for each of the plurality of interconnected switches, virtual circuits that make excessive use of the network (Khalil, col. 12, lines 3-7 *where identifying a PVC exceeding contracted information rate in order to know discard eligibility*)...";

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include the step of identifying a PVC exceeding a contracted information rate in Khalil with Swift's step of obtaining statistical data. A motivation of

identifying a PVC that exceeds the CIR is to compute the size of a virtual circuit that places excessive traffic into a network based the obtained statistical data in order to adjust the contracted rate of traffic.

Swift discloses, "...c) adjusting the contracted rate of traffic to form a modified contracted rate of traffic (Swift, col. 4, lines 19-21 *if the CIR is exceeded and then the CIR value is adjusted to form a modified contracted rate*)."

Regarding claim 2, Swift discloses, "the telecommunication network comprises a frame relay network (col. 1, line 12)."

Regarding claim 3, Swift discloses, "the telecommunication network comprises an ATM network (col. 2, lines 58-59 *where ATM network using PVC & SVC is one of packet switched networks*)."

Regarding claims 4 and 19, Swift discloses, "the VC comprises a PVC (col. 2, lines 65-66)."

Regarding claim 5, Swift discloses, "the network comprises a packet switched network (col. 2, lines 58-59)."

Regarding claims 6 and 20, Swift discloses, "the contracted rate of traffic comprises a CIR (col. 3, line 36)."

Regarding claims 7 and 21, Swift discloses, "the method of claim 1, wherein step a) includes downloading statistical data found on a website (Figure 1, element 9; col. 7, lines 2-3 *where downloading the statistical data from the NMS 9 containing PVC*

statistical data; Figure 2, element 46 NMS having a HTML graphical user interface (GUI) 46 is called a website)."

Regarding claims 8 and 22, Swift discloses, "the method of claim 7, wherein the statistical data found on the website includes a predetermined number of months of the network statistical data (col. 10, lines 39-42)."

Regarding claims 9 and 23, Swift does not disclose, "the method of claim 8, wherein the predetermined number of months comprises three months." However, at the time of the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to choose three months for collecting statistical data. A motivation of three months is a balance between satisfying user's temporary need to use network resources excessively and the need to protect against negative performance of a network due to a user's long-term excess traffic injections.

Regarding claims 10 and 24, Swift discloses, "the statistical data comprises bulkstats (Figure 4B *where the statistical data collected at NMS for a while means bulkstats*)."

Regarding claim 18, all the claim limitations as stated above, except for a computer readable medium containing instructions (Swift, col. 6, line 45).

3. Claims 16, 17, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swift in view of Khalil and further in view of Dziong et al. (U.S. 6,697,369, hereinafter "Dziong").

Regarding claims 16, 17, 30 and 31, Swift and Khalil lack what Dziong discloses, "the method of claim 1, wherein step c) further comprises the steps of using discrete probability model/continuous probability distribution model to determine a modified contracted information rate (Dziong, Figure 6, PDF; col. 2, lines 34-35)." A distribution is called discrete if its cumulative distribution function consists of a sequence of finite jumps, which means that it belongs to a discrete random variable. A distribution is called continuous if its cumulative distribution function is continuous, which means that it belongs to a random variable. Therefore, Dziong's probability distribution model has a broader meaning than the discrete and continuous probability distribution models claimed in here.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use the probability distribution model in Dziong with Swift's method of adjusting contracted information rate for the purpose of estimating a new value. A motivation of estimating a new value is to have an optimal estimated value of the CIR for user in order to provide an appropriate resource in the packet switched network to match the measured and expected demand.

Allowable Subject Matter

4. Claims 11-15 and 25-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

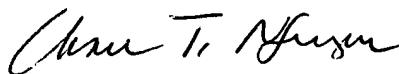
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jung Park whose telephone number is 571-272-8565. The examiner can normally be reached on Mon-Fri during 7:10-4:40.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JP

Jung Park
Patent Examiner
Art Unit 2661
September 26, 2005



CHAU NGUYEN
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